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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Adriana Lewis
#

In re application of:
Anthony V. Cruz

Serial No. 09/435,507

Filed: November 8, 1999

Examiner: S. Gravini

Docket No.: 0198

Art Unit: 2162

For: PORTABLE ELECTRIC HAIR DRYER AND MOUNT THEREFOR

Assistant Commissioner for Patents
Washington, D. C. 20231

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GROUP 3600

APPELLANTS' BRIEF

Sir:

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APPELLANTS' BRIEF

This is an appeal from the action of the examiner finally rejecting claims 1 through 16 as being unpatentable in view of prior art.

I. Real Party in Interest

The real party in interest is Hamilton Beach/Proctor-Silex, Inc.

II. Related Appeals and Interferences

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's Decision in this appeal.

III. Status of Claims

Claims 1 through 16 are pending in this application. All claims are rejected and are the subject of this appeal.

IV. Status of Amendments

No other amendments have been filed since the filing of the Notice of Appeal.

V. Summary of Invention

With reference to FIGS. 1 through 4, this invention provides an assembly of a portable electric hair dryer, generally designated 20, and a wall mount therefor, generally designated

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22, shown mounted on a vertical wall W. (Page 4, lines 19-22)

The hair dryer 20 has an elongate, hollow handle 24 and a power switch 26 (FIG. 4) mounted on the handle 24 for controlling the operation of a blower motor (not shown) mounted within a tubular blower housing 28 located on top of the handle 24. (Page 4, line 22 to page 5, line 2) A power cord 30 for connection of the hair dryer 20 to a source of house current extends out through the bottom of the handle 24. (Page 5, lines 2-4)

With reference also to FIGS. 5 and 6, the switch 26 includes a movable switch-operating member or button 36 which can be manually moved into a position to open the switch 26 to deenergize the hair dryer 20. (Page 5, lines 14-17) The particular switch 26 illustrated in the drawing is a common type of three position switch used in hair dryers. (Page 5, lines 17-19) The hair dryer is switched off when the button 36 is centered with the entire button 36 extending equally partly out of the handle 24, as shown in FIGS. 1, 3 and 6, a low speed "on" position illustrated in FIG. 5, in which the switch button 36 is tilted so that its upper end extends further into the handle 24 than its lower end, and a high speed "on" position (not illustrated) in which the lower end of the button 36 is recessed further into the handle 24 than its upper end. (Page 5, line 19

to page 6, line 2)

The blower housing 28 has a rear end covered by a cool air intake screen 38 and a front end covered by a front screen or guard 40 through which heated air exits during operation of the hair dryer 20. (Page 6, lines 9-12) The switch operating member or button 36 is mounted on the front face of the handle 24, facing generally toward the same forwardly direction as the front end of the blower housing 28. (Page 6, lines 12-15)

The wall mount 22 comprises a relatively rigid, one-piece, molded plastic body having a front face 40 and a rear face 42. (Page 6, lines 20-23) The wall mount 22 is generally ovate as seen from the front or the rear, and has a rearwardly-facing outer edge 44 that lies in a single plane so that it can fit flush against the vertical wall W. (Page 6, lines 23 to page 7, line 2) As shown in FIGS. 3 and 8 through 10, the wall mount 22 may be affixed to the wall W by means of a pair of mounting screws 46 which have heads 48 received, respectively, in upper and lower screw-receiving tubes 50. (Page 7, lines 2-5)

When viewed in vertical cross section, as illustrated in FIG. 3, the wall mount 22 is generally domed-shaped but its front face 40 is recessed to form a socket 60 for the front end of the blower housing 28, a recessed pocket 62 for the switch button 36,

and a shallow, concave recess 64 which provides a stop or rest for the lower end of the dryer handle 24. (Page 8, lines 3-8) As best shown in FIG. 3, the blower housing-receiving socket 60 has a center axis 66 that slopes forwardly away from the wall W and downwardly so that the hair dryer 20 would tend to fall off the wall mount 22 under the influence of gravity unless means are provided to positively secure the hair dryer 20 to the wall mount 22. (Page 8, lines 8-13)

In the embodiment illustrated in the drawings, the switch button-receiving pocket 62 has a shape and size that substantially matches the size and shape of the exposed portion of the switch button 36 when the switch button 36 is in the "off" position. (Page 8, lines 14-18) The bottom wall, designated 68, of the pocket 62 functions as a switch operating surface to move the switch button 36 to its "off" position as the hair dryer 20 is assembled onto the wall mount 22. (Page 8, lines 18-21) To this end, as illustrated in FIGS. 1, 5 and 6, the switch operating surface 68 has an arcuately convex surface that mates with switch button 36, which is arcuately concave. (Page 8, lines 21-24) Accordingly, if the switch button 36 happens to be in one of its switch-closed or "on" positions, as shown in FIG. 5, the engagement of the switch button 36 by the switch-operating

surface 68 as the hair dryer 20 is assembled onto the wall mount 20 will cause the switch button 36 to be moved to its centered or "off" position shown in FIG. 6. (Page 8, line 24 to page 9, line 5)

As best shown in FIG. 1, the switch button-receiving pocket 62 is located within a handle-receiving channel 70 that extends downwardly from the blower-housing receiving socket 60 along the vertical centerline of the wall mount 22. (Page 9, lines 6-9) To positively secure the hair dryer 20 to the wall mount 22, a pair of mutually-confronting, outwardly-extending, rectangular, mutually-spaced clamp jaws 72 project forwardly along the sides of the channel 70. (Page 9, lines 9-13) The jaws 72 are an integral part of the wall mount 22; otherwise they are separated from the body of the wall mount 22 by upper and lower horizontal slots 74 and a forwardly-facing slots 76. (Page 9, lines 13-16) Small clamping protuberances 78 are formed on the confronting, outer faces of the jaws 72 that are adapted to be received within small clamping recesses 80 in the handle 24. (Page 9, lines 16-18) As shown best in FIG. 3 and 4, the handle 24 is generally ovate and the recess 80 are located on the rearward side of the handle 24. (Page 9, lines 18-20) The clamping recesses 80 are spaced from the base of the channel 70 by a distance such that

their forwardmost edges are engaged by rearward edges of the clamping protuberances 78 and biased thereby toward the front face 40 of the wall mount 22. (Page 9, lines 21-24) The hair dryer 20 is thereby securely held against the wall mount 22 and the switch 26 assuredly switched off. (Page 9, line 24 to page 10, line 2)

To use the hair dryer 20, one may simply grasp the handle and pull it away from the wall mount 22, and switch the hair dryer 20 to one of its "on" positions. (Page 10, lines 10-12) To return the hair dryer to the wall mount 22, one may simply point the front end of the hair dryer toward the wall mount 22, and insert the front end of the blower housing 28 into the blower housing-receiving socket 60. (Page 10, lines 12-15) Provided the protuberances 78 enter the recesses 80, the switch button 36, if not previously moved to its "off" position, will be moved to its "off" position because of the engagement by the switch button 36 with the switch operating surface 68. (Page 10, line 21 to page 11, line 1)

With reference to FIG. 7, an intermediate portion of the power cord 30 is hidden behind the wall mount 22. A pair of cord-receiving-notches 86 are located at the bottom of the wall mount 22 through which the power cord 30 can be threaded. (Page

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11, lines 21-24) The back side of the socket 60 functions as a reel or cord wrap 92 for taking up excessive lengths of the power cord 30 between the location of the wall mount 22 and the electrical receptacle (not shown) into which the plug 34 is inserted. (Page 12, lines 9-12) In FIG. 7, the power cord 30 is shown simply wrapped over the top of the reel 92. (Page 12, lines 14-16) In practice, there could be one or more turns of the power cord 30 coiled about the reel 92. (Page 12, line 16-17) In any event, when the power cord 30 is wrapped over the reel 92, it is essentially impossible to pull the power cord 30 out from behind the back of the wall mount 22. (Page 12, lines 17-20)

VI. Issues

The issues before the Board are:

(1) whether claims 1 through 5, 8 through 12, 15 and 16 of this application are anticipated under 35 U.S.C. 102(b) by Andis, US patent no. 5,590,475 ("the Andis '475 patent"); and

(2) whether claims 6, 7, 13 and 14 of this application are unpatentable under 35 U.S.C. 103(a) over the Andis '475 patent in view of Chan, US patent no. 5,857,263 (the Chan '263 patent).

VII. Grouping of Claims

The appealed claims were rejected on two grounds as follows:

Ground I. Claims 1 through 5, 8 through 12, 15 and 16 of

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this application were rejected as anticipated under 35 U.S.C. 102(b). For the purposes of this appeal, of the claims rejected on Ground I:

- A. Claims 1, 8, 15 and 16 stand or fall together;
- B. Claims 2, 3, 9 and 10 stand or fall together; and
- C. Claims 4, 5, 11 and 12 stand or fall together.

Ground II. Claims 6, 7, 13 and 14 were rejected as unpatentable under 35 U.S.C. 103(a). For purposes of this appeal, of the claims rejected on Ground II:

- A. Claims 6 and 13 stand or fall together; and
- B. Claims 7 and 14 stand or fall together.

VIII. Argument

A. The Prior Art. The Andis '475 patent shows a wall mount or holder 17 for a hand-held hair dryer 19. As described beginning at column 3, line 36, the holder is preferably fabricated or molded in one piece from a plastic material which is resilient. When the hair dryer 19 is assembled on the wall mount, it is retained between a lower shelf 71 that has a shallow recess 73 and an upper socket 81 which has tab or lip 83 separated from the socket 81 by a pair of slits 85 and 87. The holder also includes a cradle 91 which includes a bottom wall 93

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and a pair of laterally spaced walls or surfaces 95 and 97. The cradle 91 does not appear to function as a cradle, but rather as a switch operator that causes a switch operator on the handle of the hair dryer to be moved to a closed of "off" position in response to the insertion of the handle portion 25 into the cradle 91.

The Chan '263 patent is relied upon by the examiner for its disclosure of a power cord retaining means 40 at column 5, lines 28 to 40. The cord retaining means 40 is provided so that surplus lengths of the power cord could be restrained and stored within the base housing. As described in the paragraph beginning at column 5, line 41, the retaining means 40 in the embodiment of FIGS. 1 through 5 includes a spring operated retraction mechanism. A second embodiment shown in FIGS. 5 through 10 also has a power cord retraction mechanism.

B. Claims 1 through 5, 8 through 12, 15 and 16 are not anticipated under the provisions of 35 U.S.C. §102(b).

With regard to the Ground I, Group A claims 1, 8, 15 and 16, claim 1, the only independent claim on appeal, recites a portable electric appliance (limited to a hair dryer in claims 8, 15 and 16) having a power switch mounted on its handle, and a wall mount having a one-piece molded plastic body. The power switch has an

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operating member which can be manually moved into a position to open the switch to deenergize the appliance. The wall mount is claimed as including a front face and a rear face. The front face has a switch-engaging surface portion adapted to engage the switch operating member to open the switch as the appliance is assembled onto the wall mount. Reference to applicant's disclosure reveals that the rear face faces toward the wall or other surface on which the mount is placed and the front face faces away from the wall, i.e. in the same direction the wall faces.

In order to reject claim 1 as fully anticipated, the examiner ignores applicant's disclosure and creates the fiction that the cradle 91 of the Andis '475 patent comprises both the front face of the holder 17 and the rear face of the holder 17. Thus, the examiner has failed to determine the meanings of the terms used in claim 1, has provided his own definitions, and twisted or stretched the teachings of the Andis '475 patent. This action by the examiner is manifestly improper.

As for Ground I, Group B claims 2, 3, 9 and 10, each of these claims recite that the appliance handle and the claim jaws have cooperating projections and recesses, the clamp jaws being adapted to clamp the appliance handle therebetween. No such

cooperating projections and recesses are disclosed by the Andis '475 patent. Instead, the Andis appliance is clamped between the shelf 71, which engages the bottom of the handle 25, and the tab or lip 83 which engages the body of the operating portion of the appliance and not the handle.

Ground I, Group C claims 4, 5, 11 and 12, recite that the projections resiliently cam against the leading edges of the recesses, pulling the handle toward the wall mount so that the switch operating member is pressed against the front wall of the wall mount. Such a construction is not remotely suggested by the Andis '475 patent.

In summary, it is apparent that the claims rejected as fully anticipated by the Andis '475 patent recite elements that are not disclosed in that patent. Therefore, the rejection of claims 1 through 5, 8 through 12, 15 and 16 as fully anticipated was in error.

C. Claims 6, 7, 13 and 14 are not directed to an invention which is obvious under the provisions of 35 U.S.C. §103(a).

Ground II, Group A includes claims 6 and 13. These claims were rejected as unpatentable over the combination of the Andis '475 patent and the Chan '263 patent. However, these claims simply add to parent claims 1 and 8 the limitation that a power

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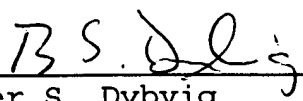
cord extends outwardly of from the handle, an element disclosed in the Andis '475 patent. Claims 6 and 13 are, therefore, considered to be allowable along with parent claims 1 and 8.

Ground II, Group B claims 7 and 14 recite, *inter alia*, that at least part of the power cord is housed behind the front face of the wall mount and the socket has a back surface that forms a reel about which the power cord may be coursed. These claims demonstrate the harm done by the examiner's failure to properly analyze the claims, starting with an analysis of the meanings to be attributed to language used in the claims. In this case the examiner argues, in effect, that the Chan '263 patent suggests that the power cord be housed behind the "front face" 91 of the Andis '475 patent, with a non-existent socket acting as a reel. This rejection clearly lacks merit.

IX. Summary

For the foregoing reasons, the examiner's action in rejecting claims 1 through 16 should be reversed.

Respectfully submitted,



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APPENDIX A

CLAIMS ON APPEAL

1. A portable electric appliance and wall mount therefor comprising:

a portable electric appliance having an elongate handle and a power switch mounted on said handle, said power switch including an operating member which can be manually moved into a position to open said switch to deenergize the appliance; and

a wall mount comprising a one-piece, molded plastic body having a front face and a rear face, said front face having a switch-engaging surface portion adapted to engage said switch operating member to open said switch as said appliance is assembled onto said wall mount in the event an attempt is made to assemble said appliance on said wall mount when said power switch is closed and said appliance is, therefore, energized.

2. The appliance and wall mount of claim 1 wherein said body comprises a pair of outwardly-extending, mutually-spaced clamp jaws partly separated from surrounding parts of said body, said appliance handle and said clamp jaws having cooperating
5 projections and recesses, said clamp jaws being adapted to clamp said appliance handle therebetween with said switch operating member pressed against said front face of said wall mount when said projections enter said recesses.

3. The appliance and wall mount of claim 2 wherein said

recesses are located in said handle and one of said projections extends from one of said clamp jaws and the other of said projections extends from the other of said clamp jaws, said
5 projections facing substantially toward one another.

4. The appliance and wall mount of claim 3 wherein said projections and said recesses are so located relative to said switch operating member that, as the appliance is advanced toward said wall mount, said projections resiliently cam against the
5 leading edges of said recesses, pulling said handle toward said wall mount so that said switch operating member is pressed against the front wall of said wall mount.

5. The appliance of claim 4 wherein said appliance includes a housing on top of said handle that contains working parts of said appliance and wherein said front face of said wall mount is recessed to provide a socket for receiving said housing.

6. The appliance and wall mount of claim 1 wherein a power cord extends outwardly from said handle.

7. The appliance and wall mount of claim 6 wherein said wall mount has slots at its lower end for receiving sections of said power cord so that at least part of said power cord is housed behind the front face of said wall mount, and wherein said
5 socket has a back surface that forms a reel about which said power cord may be coursed.

8. The appliance and wall mount of claim 1 wherein said

appliance is a portable, hand-held hair dryer.

9. The appliance and wall mount of claim 8 wherein said body comprises a pair of outwardly-extending, mutually-spaced clamp jaws partly separated from surrounding parts of said body, said appliance handle and said clamp jaws having cooperating
5 projections and recesses, said clamp jaws being adapted to clamp said appliance handle therebetween with said switch operating member pressed against said front face of said wall mount when said projections enter said recesses.

10. The appliance and wall mount of claim 9 wherein said recesses are located in said handle and one of said projections extends from one of said clamp jaws and the other of said projections extends from the other of said clamp jaws, said
5 projections facing substantially toward one another.

11. The appliance and wall mount of claim 10 wherein said projections and said recesses are so located relative to said switch operating member that, as the appliance is advanced toward said wall mount, said projections resiliently cam against the
5 leading edges of said recesses, pulling said handle toward said wall mount so that said switch operating member is pressed against the front wall of said wall mount.

12. The appliance of claim 8 wherein said appliance includes a housing on top of said handle that contains working parts of said appliance and wherein said front face of said wall

mount is recessed to provide a socket for receiving said housing.

13. The appliance and wall mount of claim 8 wherein a power cord extends outwardly from said handle.

14. The appliance and wall mount of claim 13 wherein said wall mount has slots at its lower end for receiving sections of said power cord so that at least part of said power cord is housed behind the front face of said wall mount, and wherein said
5 socket has a back surface that forms a reel about which said power cord may be coursed.

15. The appliance and wall mount of claim 8 wherein said hair dryer has a blower and heater housing on top of said handle, said housing having an air intake at its rear end and an air outlet at its front end, and wherein said switch operating member
5 is located on the front end of said handle and projects forwardly therefrom.

16. The appliance and wall mount of claim 15 wherein said wall mount has a recess in its front wall forming a cavity for receiving the front portion of said blower and heater housing.